Supreme Court, U.S.
FILED

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No. 97-___

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

DOROTHY MATHIS, individually and as
Special Administrator for Jerome Mathis, deceased

Petitioner,

v.

J.W. FAIRMAN and GERONE JENKINS

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When a pre-trial detainee dies by hanging as the proximate result of an official policy to use untrained cadets in the place of trained correctional officers to supervise detainees,

Does a claim for damages for deprivation of life in violation of the Fourteenth Amendment require the same proof of subjective intent as an Eighth Amendment claim for a convicted felon?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Dorothy Mathis respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on July 24, 1997.

OPINIONS BELOW

The decision of the Court of Appeals (App. 1-8) is reported at 120 F.3d 88. The opinion of the district court (App. 10-23) is unreported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254: The judgment of the Court of Appeals (App. 9) was entered on July 24, 1995.

CONSTITUTIONAL PROVISION INVOLVED

This case involves the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

This case arises from a jail suicide. Petitioner's decedent Jerome Mathis died while a pre-trial detainee at the Cook County Department of Corrections, Petitioner, as special administrator, brought this action under 42 U.S.C. §1983 contending, *inter alia,* that Mathis' death was caused by a policy to staff the jail with untrained "correctional cadets."

Respondent Gerome Jenkins, the "correctional cadet" who was in charge of petitioner's decedent on June 9, 1991, had

been hired on June 3, 1991. After four or five days of orientation, and a day getting fitted for uniforms, Jenkins reported to work at 8:00 a.m. on June 9, 1991.[1] His first assignment was to supervise a tier of 25 pre-trial detainees.

Mathis had been sent for a psychiatric evaluation on June 9, 1991 before Jenkins reported to work. (App. 21.) After returning from the evaluation, Mathis telephoned his family to share his fears that he was going to be killed. The family made its concerns known to supervisory personnel at the Department of Corrections.

Mathis continued to act strangely; at 9:27 a.m., Mathis told a paramedic "that he heard voices of somebody wanting to kill him or that he was going to kill himself that day." Shortly after 10:00 a.m., Mathis told respondent Jenkins that "someone was out to kill him." Jenkins reported to his supervisor that an inmate was talking and mumbling to himself and that "[t]he inmate stated that he was threatened and he was scared."

Mathis was taken for a psychiatric evaluation sometime after 10:00 a.m. (App. 2) and returned to his tier. At 11:25 a.m., a supervisor ordered that Mathis was to be locked in his cell and carefully monitored. At about 4:00 p.m., another correctional cadet walked through the tier to count the prisoners and discovered Mathis hanging in his cell. A paramedic who arrived on the scene shortly after 4:00 p.m. was unable to resuscitate Mathis and noted that Mathis' body was cold.

Petitioner presented unrebutted evidence that it takes at least 90 minutes before a hanging body becomes cold. Based

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1. Jenkins did not receive instructions about jail hangings until — after the death of petitioner's decedent — he completed the 10 week cadet training program.

on this evidence, petitioner argued that the paramedic's observation that Mathis' body had been cold at 4:00 p.m meant that respondent Jenkins had not monitored petitioner's decedent, notwithstanding his supervisor's order to keep a close eye on Mathis.

The court of appeals described this factual issue as "a red herring," (App. 6) concluding that summary judgment had been properly granted in favor of respondents because "[t]he most that can be said, then, is that Jenkins and his colleagues were negligent in failing to keep a closer eye on Mathis than they did."

REASONS FOR GRANTING THE WRIT

This case presents the important and unresolved question of whether the subjective deliberate indifference standard of *Farmer v. Brennan*, 511 U.S. 825 (1994) is applicable to a pre-trial detainee who dies by hanging as the result of a policy decision that meets the objective deliberate indifference standard of *Canton v. Harris*, 489 U.S. 378 (1989).

In 1991, the policy of the Cook County Jail was to assign newly hired correctional cadets to supervise a tier in the jail in advance of formal training. (App. 8.) The need for formal training of correctional officers is undisputed — as petitioner's expert explained, an untrained officer can panic when confronted by a prisoner dangling by his (or her) neck from an air shaft, while a trained officer would know "that when you observe a body, if the feet are off the floor, you know it's not a ruse." (Rowan Dep. 140.)

By adopting a policy of putting cadets to work before formal training, respondent Fairman, as the policymaker of the jail, "can reasonably be said to have been deliberately indifferent to the need [for training]." *Canton v. Harris*, 489 U.S. at 390. But if petitioner's Fourteenth Amendment claim is measured by a subjective Eighth Amendment standard, Fairman's liability for the defective policy requires proof that

he had "draw[n] the inference" that putting untrained cadets to work would cause at least one jail suicide.[2]

Although the "consciousness of risk" required for an Eighth Amendment claim is not part of this Court's Fourteenth Amendment jurisprudence, the courts of appeals have uniformly concluded — in a line of cases that predate *Farmer v. Brennan* — that a jail suicide of a pre-trial detainees is to be analyzed under the Eighth Amendment deliberate-indifference standard.[3]

The decisions from the courts of appeals incorporating Eighth Amendment deliberate indifference into the Fourteenth Amendment are based on language from *Bell v. Wolfish*, 441 U.S. 520 (1979) that "pretrial detainees, who have not been convicted of any crimes, retain at least those constitutional rights that we have held are enjoyed by convicted prisoners." Id. at 545. *See, e.g., Bell v. Stigers*, 937 F.2d 1340, 1342 n.4 (8th Cir. 1991). This is a slender thread on which to equate deprivation of life under the Fourteenth Amendment with the imposition of punishment under the Eighth Amendment.

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2. Another pre-trial detainee, while being supervised by an untrained cadet, died by hanging the day before the death of petitioner's decedent. The district court described this death as resulting "from the cadet's gross negligence and not any training policies." (App. 23 n.8.)

3. *See, e.g., Gordon v. Kidd*, 971 F.2d 1087, 1094 (4th Cir. 1992), *Molton v. City of Cleveland*, 839 F.2d 240, 243 (6th Cir. 1988); *State Bank of St. Charles v. Camic*, 712 F.2d 1140, 1145 (7th Cir. 1983); *Bell v. Stigers*, 937 F.2d 1340, 1342 n.4 (8th Cir. 1991); *Cabrales v. County of Los Angeles*, 864 F.2d 1454, 1461 n.2 (9th Cir. 1988). *Belcher v. City of Foley, Ala*, 30 F.3d 1390, 1396 (11th Cir. 1994).

The Eighth Amendment requires "inquiry into a prison official's state of mind when it is claimed that the official has inflicted cruel and unusual punishment." *Wilson v. Seiter,* 501 U.S. 294, 299 (1991). But the Eighth Amendment does not come into play until after the state "has secured a formal adjudication of guilt in accordance with due process of law." *Ingraham v. Wright,* 430 U.S. 651, 671-72 n. 40 (1977). Because petitioner's decedent was a pre-trial detainee, "the Eighth Amendment has no application." *City of Revere v. Massachusetts General Hospital,* 463 U.S. 239, 244 (1979).

Petitioner's claim in this case turns on the factual contention that a properly trained correctional officer would have kept a "close eye" on plaintiff's decedent — as the supervisor had ordered. The district court acknowledged that respondent Fairman's policy of assigning untrained recruits to supervise a tier of detainees "may well have been imprudent, given the various emergencies that can arise in a jail setting." (App. 25.) If this "imprudent" policy was the proximate cause of the death of petitioner's decedent, petitioner should not be required to prove any subjective intent to establish a claim for the deprivation of life without due process of law as guaranteed by the Fourteenth Amendment.

CONCLUSION

It is therefore respectfully submitted that the petition for writ of certiorari should be granted.

October, 1997

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